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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/701,075

11/05/2003

Bertil Hok

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01/13/2005

EDELL, SHAPIRO, FINNAN & LYTLE, LLC
1901 RESEARCH BOULEVARD
SUITE 400
ROCKVILLE, MD 20850

EXAMINER

CYGAN, MICHAEL T

ART UNIT

PAPER NUMBER

2855

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/701,075

Applicant(s)

HOK ET AL

Examiner

Michael Cygan

Art Unit

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The objection to Figure 2 is withdrawn in response to applicant's submission of corrected drawings.
2. The objections to the drawings based upon lack of illustration of the subject matter of claims 4 and 6 are withdrawn, since applicant's response indicated that the features of claims 4 and 6 are conventional features which would be known in the art in the claimed configuration. See pages 10-11 of the applicant's response filed 01 December 2004.
3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the structures corresponding to claims 13-15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Tom (US 6,295,861 B1). Tom discloses the claimed invention, a sensor comprising a housing [34] having two cavities [44,45], each having within a resonating quartz crystal composed of compliant elements [12,14] and inertial elements [18,20,22], having means for exciting the crystals and comparing the output signals to determine the relative gas content of the cavities, having a flow controlling pump [118], and a filter (column 10 lines 7-15). See entire document, especially Figures 1-3 and column 6 lines 21-65.
5. Claims 1-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Robinson (US 2,952,153). Robinson discloses the claimed invention, a sensor comprising a housing [56] having two cavities [16,36], each having a resonant frequency dependent on the density and velocity of sound of gas therein (column 2 lines 5-34 and column 3 lines 45-51), excitation means comprising compliant membranes [22,24,42,44] held by inertial frame members (Figure 1), and means for comparing output signals to determine a frequency change (Figure 1; column 4). A filter, and ambient air control means [68], may be used (column 8 lines 59+).
6. Claims 1-6 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Morison (US 4,255,964). Morison discloses the claimed invention, a sensor comprising a housing [10] having two cavities [18,34],

each having a resonant frequency dependent on the density and velocity of sound of gas therein (column 4 lines 4-9 and 45-48), excitation means comprising compliant transducers [20,24,42,38] held by perforated supports [22,26,38,42] (column 2 lines 1-23), and means for comparing output signals to determine a frequency change (Figure 1; columns 2-3). Ambient air control means may be used (Figure 1 and column 5 lines 27-60). The reflection of waves (column 4 lines 17-44) creates a standing wave pattern forming a Kundt resonator.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1, 2, and 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowers (US 6,321,588 B1) in view of Potyrailo (US 6,684,683 B2). Bowers discloses a sensor comprising a housing [100] having an array of SAW sensors, having means for exciting the crystals and comparing the output signals to determine the relative gas content of the cavities, having a flow controlling pump [420], and a filter [440]. The oscillators are comprised of ASICs integrated onto a single chip and having a component [130] for digital communication with a microprocessor [150]. See entire document, especially Figures 1 and 4 and columns 4-5.

Bowers discloses the claimed invention except for multiple cavities and a micromachined silicon structure. Potyrailo teaches a sensor for gases having multiple cavities bordered with a semipermeable membranes and each containing a gas sensor such as a SAW or an equivalent sensor such as a cantilever "or the like"; see Figure 7 and column 3. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use multiple cavities as taught by Potyrailo in the invention taught by Bowers to form the array, since Potyrailo teaches the advantage of chemical specificity. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use cantilevers as taught by Potyrailo in the invention taught by Bowers to form the array, since Potyrailo teaches that such elements are interchangeable, and the use of each would gain any advantages of the particular form.

With respect to claim 8, it is notoriously well known in the gas sensing art to use cantilevers made of micromachined silicon, and their use in the invention described above would have been obvious to one having ordinary skill in the art in order to utilize their well known properties having well known advantages.

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morison (US 4,255,964) in view of Fischer (GB 2,288,660 A). Morison teaches the claimed invention except for use of a Helmholtz resonator. Fischer teaches a gas density sensor using a Helmholtz resonator. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a Helmholtz resonator as the resonating cavity, since the Helmholtz effect is old in the art and known to provide uniform, reliable gas density-resonant frequency relations, with the additional advantage of having no moving parts which could break or wear.
9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morison (US 4,255,964) in view of Granstedt ("New CO₂ Sensor with Fast Resolution and Fast Response", October 2001). Morison teaches the claimed invention except for a microacoustic resonator. Granstedt teaches the use of a Kundt resonator for gas density sensing, and teaches the desirability of minituarization of such a sensor device; see page 3101 first

paragraph and page 3102 second column. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a miniaturized Kundt (microacoustic) device as taught by Granstedt in the invention taught by Morison, since such would provide the advantages of new applications of the technique.

Response to Arguments

10. Applicant's arguments filed 01 December 2004 have been fully considered but they are not persuasive. With respect to the rejections based upon Tom, applicant argues that the resonator of Tom is not dependent on a "physical characteristic" as claimed, but is instead dependent on adsorption on the resonator. However, since adsorption is a physical characteristic of an analyte gas (as stated by Tom, the sensor is selected to be "specifically physically adsorptive" with a component of the gas stream; see column 5 lines 18-21), and the amount of adsorption depends on the amount (concentration) of gas filling the chamber, the limitation of the claim is met. The same argument holds for the rejections based upon Bowers in view of Potyrailo.

11. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a

reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Dimeff (US 3,953,734), Gallagher (US 5,363,691), Karr (US 6,378,372 B1), Bellew (US 2004/0043423 A1), and Leopold (EP 538,235 A1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cygan whose telephone number is (571) 272-2175. The examiner can normally be reached on 8:30-6 M-Th, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on 571-272-2180. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2855

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MICHAEL CYGAN, PH.D.
PRIMARY EXAMINER